

**EXHIBIT C**

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2  
3 IN THE UNITED STATES BANKRUPTCY COURT  
4 FOR THE SOUTHERN DISTRICT OF NEW YORK  
5

6 In re:

7 WYTHE BERRY FEE OWNER LLC, ) Chapter 11  
8 )  
9 Alleged Debtor. ) No.22-11340 (MG)  
10 )  
11 -----)

12 REMOTE VIDEOTAPED DEPOSITION OF EPHRAIM DIAMOND  
13

14 Wednesday, January 4, 2023  
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18  
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20

21 Reported by:  
22 LISA M. MURACO  
23 JOB NO. 221055  
24  
25

<p>Page 2</p> <p>1</p> <p>2 Wednesday, January 4, 2023</p> <p>3 9:30 a.m. Eastern</p> <p>4</p> <p>5</p> <p>6</p> <p>7 REMOTE Deposition of EPHRAIM</p> <p>8 DIAMOND, held VIA ZOOM, before LISA M.</p> <p>9 MURACO, a Notary Public of the State of New</p> <p>10 York and Florida.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3 (REMOTE)</p> <p>4</p> <p>5 PAUL HASTINGS LLP</p> <p>6 Attorneys for Zelig Weiss</p> <p>7 2050 M Street, NW</p> <p>8 Washington, DC 20036</p> <p>9 BY: NICHOLAS BASSETT, ESQ.</p> <p>10 WILL FARMER, ESQ.</p> <p>11 JASON PIERCE, ESQ.</p> <p>12</p> <p>13</p> <p>14 HERRICK, FEINSTEIN LLP</p> <p>15 Attorneys for Wythe Berry Fee Owner</p> <p>16 2 Park Ave</p> <p>17 New York, NY 10016</p> <p>18 BY: JANICE GOLDBERG, ESQ.</p> <p>19 STEPHEN SELBST, ESQ.</p> <p>20 ZACHARY DENVER, ESQ.</p> <p>21 AVERY MEHLMAN, ESQ.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 4</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3 (REMOTE)</p> <p>4</p> <p>5 CHAPMAN AND CUTLER LLP</p> <p>6 Attorneys for Witness</p> <p>7 320 S Canal Street</p> <p>8 Chicago, IL 60606</p> <p>9 BY: ERIC SILVESTRI, ESQ.</p> <p>10 MICHAEL FRIEDMAN, ESQ.</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13 Legal Video Specialist, Jon Popham</p> <p>14 Zelig Weiss</p> <p>15 Jon Brook, ESQ., on Behalf of Zelig Weiss</p> <p>16 Osnat Tenenbaum, Bondholders</p> <p>17 Shlomy Ilany, General Counsel, Mishmeret</p> <p>18 Ephraim Diamond, Wythe</p> <p>19 Asaf Ravid, Wythe</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 5</p> <p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED</p> <p>3 by and between the attorneys for the</p> <p>4 respective parties herein, that filing and</p> <p>5 sealing be and the same are hereby waived.</p> <p>6 IT IS FURTHER STIPULATED AND AGREED</p> <p>7 that all objections, except as to the form</p> <p>8 of the question, shall be reserved to the</p> <p>9 time of the trial.</p> <p>10 IT IS FURTHER STIPULATED AND AGREED</p> <p>11 that the within deposition may be sworn to</p> <p>12 and signed before any officer authorized</p> <p>13 to administer an oath, with the same</p> <p>14 force and effect as if signed and sworn</p> <p>15 to before the Court.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 - oOo -</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 10</p> <p>1 E. DIAMOND</p> <p>2 And what group did you practice in?</p> <p>3 A. A year in the corporate, and then</p> <p>4 five-and-a-half years in the bankruptcy --</p> <p>5 Q. Okay.</p> <p>6 A. -- group.</p> <p>7 Q. Well, Mr. Diamond, you know how a</p> <p>8 deposition works, so I won't belabor the</p> <p>9 details.</p> <p>10 But if you need break at any time</p> <p>11 today, just let me know, and I'm happy to try</p> <p>12 to accommodate that.</p> <p>13 If I say -- if I ask a question that</p> <p>14 is not clear to you, let me know.</p> <p>15 I'm happy to try to rephrase for</p> <p>16 you, okay?</p> <p>17 A. Okay.</p> <p>18 Q. So you are the associate</p> <p>19 restructuring officer for All Year Holdings</p> <p>20 Limited; is that right?</p> <p>21 A. Correct.</p> <p>22 Q. And how long have you held that</p> <p>23 position?</p> <p>24 A. Since December 30, 2020.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 11</p> <p>1 E. DIAMOND</p> <p>2 And All Year is the sole member of</p> <p>3 another entity called YGWV LLC; is that right?</p> <p>4 A. Correct.</p> <p>5 Q. And then YGWV LLC, in turn, is the</p> <p>6 50 percent member of another entity called</p> <p>7 Member LLC; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. I did -- the full name is Wythe</p> <p>10 Berry Member LLC, right?</p> <p>11 A. Yes.</p> <p>12 Q. Is that okay if I refer to that as</p> <p>13 Member LLC today?</p> <p>14 A. Yes.</p> <p>15 Q. And the other 50 percent owner of</p> <p>16 Member LLC is Mr. Weiss.</p> <p>17 Is that your understanding?</p> <p>18 A. That is my understanding.</p> <p>19 Q. Okay.</p> <p>20 And then Member LLC is the sole</p> <p>21 member of another entity called Wythe Berry Fee</p> <p>22 Owner LLC; is that right?</p> <p>23 A. Correct.</p> <p>24 Q. Okay.</p> <p>25 Do you have any position at YGWV</p>
<p style="text-align: right;">Page 12</p> <p>1 E. DIAMOND</p> <p>2 LLC?</p> <p>3 A. No.</p> <p>4 Q. Do you make decisions on behalf of</p> <p>5 YGWV LLC?</p> <p>6 A. I'm sorry. I don't understand the</p> <p>7 question.</p> <p>8 Do I make?</p> <p>9 Q. Well, YGWV LLC is the -- not only</p> <p>10 the 50 percent owner, but the 50 percent</p> <p>11 controlling, managing member of Member LLC.</p> <p>12 Is that your understanding?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 So YGWV, subject to the Member LLC</p> <p>16 operating agreement, makes decisions on behalf</p> <p>17 of Member LLC; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. So -- so who are the individuals who</p> <p>20 would make those decisions at YGWV on behalf of</p> <p>21 Member LLC?</p> <p>22 A. Well, there are two restructuring</p> <p>23 officers at All Year Holdings, myself and Asaf</p> <p>24 Ravid. And collectively, we, you know, discuss</p> <p>25 and make decisions about how, you know, to</p>	<p style="text-align: right;">Page 13</p> <p>1 E. DIAMOND</p> <p>2 operate generally the All Year business,</p> <p>3 including YGWV.</p> <p>4 Q. Okay.</p> <p>5 So does YGWV have any of its own</p> <p>6 employees?</p> <p>7 A. Not that I'm aware of.</p> <p>8 Q. And does Member LLC?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. And does Fee Owner?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Okay.</p> <p>13 So yourself and Mr. Ravid at All</p> <p>14 Year are the ones who ultimately make decisions</p> <p>15 for YGWV, for Member LLC, and for Fee Owner; is</p> <p>16 that right?</p> <p>17 A. Make decisions for All Year, which</p> <p>18 have implications for YGWV and down the chain,</p> <p>19 as you said.</p> <p>20 Q. Okay.</p> <p>21 If there was ever a situation where</p> <p>22 the interest of YGWV, Member LLC, or Fee Owner</p> <p>23 would diverge from those of All Year, how would</p> <p>24 that be handled?</p> <p>25 MS. GOLDBERG: Objection.</p>

<p style="text-align: right;">Page 14</p> <p>1 E. DIAMOND</p> <p>2 BY MR. BASSETT:</p> <p>3 Q. You can answer.</p> <p>4 A. Oh, okay. Sorry.</p> <p>5 Again, repeat the question.</p> <p>6 How would we.</p> <p>7 Q. Well, I think what you said is you</p> <p>8 make decisions at the All Year level and those</p> <p>9 decisions would have implications for the other</p> <p>10 LLC entities that we have talked about, that</p> <p>11 are further down in the chain, if you will.</p> <p>12 A. Correct.</p> <p>13 Q. And my question for you is, if there</p> <p>14 was a situation in which there was not</p> <p>15 alignment between the interests of one of those</p> <p>16 LLCs and All Year, how would you deal with</p> <p>17 that?</p> <p>18 MS. GOLDBERG: Objection.</p> <p>19 Speculative.</p> <p>20 BY MR. BASSETT:</p> <p>21 Q. You can answer.</p> <p>22 And as a general rule, Mr. Diamond,</p> <p>23 unless your -- I will let your counsel correct</p> <p>24 me if I'm wrong, but unless your counsel</p> <p>25 instructs you or recommends that you not</p>	<p style="text-align: right;">Page 15</p> <p>1 E. DIAMOND</p> <p>2 answer, you should answer notwithstanding any</p> <p>3 objection.</p> <p>4 MS. GOLDBERG: That's correct.</p> <p>5 A. Okay. I'm -- you're asking what if</p> <p>6 the interest diverts, what would happen there.</p> <p>7 So I think the answer to that is</p> <p>8 that Asaf and I -- first of all, I'm not sure</p> <p>9 that those interests ever diverge because, you</p> <p>10 know, the Fee Owner is ultimately an asset</p> <p>11 whose benefit enures to the All Year Holdings.</p> <p>12 And likewise, to your clients Zelig</p> <p>13 Weiss, because he is a 50 owner. But they</p> <p>14 don't -- when we take actions that are relevant</p> <p>15 to each of those subsidiaries, we consider</p> <p>16 their impact on those subsidiaries and their</p> <p>17 constituents, as well as our constituents.</p> <p>18 Q. So in your view, there's never a</p> <p>19 situation in which the interests of Fee Owner,</p> <p>20 for example, can possibly be different from the</p> <p>21 interests of All Year?</p> <p>22 MS. GOLDBERG: Objection.</p> <p>23 A. I can't speculate as to whether</p> <p>24 there would ever be. But for the moment,</p> <p>25 they're aligned.</p>
<p style="text-align: right;">Page 16</p> <p>1 E. DIAMOND</p> <p>2 Q. Okay.</p> <p>3 But there's no -- there's no sort of</p> <p>4 corporate governance procedures in place to</p> <p>5 address that situation?</p> <p>6 MS. GOLDBERG: Objection.</p> <p>7 MR. SILVESTRI: Objection. Sorry.</p> <p>8 A. I think we take guidance and counsel</p> <p>9 when needed, when we feel that we need to, on</p> <p>10 those questions.</p> <p>11 Q. Okay.</p> <p>12 But just to be clear, there's no</p> <p>13 one, to your knowledge, at present, who is</p> <p>14 independently tasked with making decisions on</p> <p>15 behalf of Fee Owner, as opposed to All Year?</p> <p>16 MS. GOLDBERG: Objection.</p> <p>17 A. Again, I think we -- we act in that</p> <p>18 capacity as well.</p> <p>19 Q. Is there anyone who makes decisions</p> <p>20 exclusively on behalf of Fee Owner and not on</p> <p>21 behalf of All Year?</p> <p>22 MS. GOLDBERG: Objection.</p> <p>23 A. There's no third -- if you're</p> <p>24 asking, like, physically, is there a third</p> <p>25 person, no, there is no third person.</p>	<p style="text-align: right;">Page 17</p> <p>1 E. DIAMOND</p> <p>2 Q. Okay.</p> <p>3 So there's -- you mentioned you and</p> <p>4 Mr. Ravid as restructuring officers at All</p> <p>5 Year, who made decisions.</p> <p>6 And just so the record is clear,</p> <p>7 there's no additional person, no other person</p> <p>8 at Fee Owner who just makes decisions on behalf</p> <p>9 of Fee Owner?</p> <p>10 MS. GOLDBERG: Objection.</p> <p>11 A. Fee Owner has no employees. I'm</p> <p>12 just trying to -- I apologize.</p> <p>13 I'm just not fully understanding the</p> <p>14 question.</p> <p>15 Q. I think you answered. I just wanted</p> <p>16 to make the record clear.</p> <p>17 I thought you said there is no other</p> <p>18 person.</p> <p>19 A. There's no other physical person.</p> <p>20 Exactly.</p> <p>21 Q. Okay.</p> <p>22 Mr. Diamond, do you -- you're</p> <p>23 obviously familiar with the involuntary</p> <p>24 bankruptcy case that the parties, whom I'll</p> <p>25 refer to as the petitioning creditors, which by</p>

<p style="text-align: right;">Page 18</p> <p>1 E. DIAMOND</p> <p>2 the way, that consists of, just so the record</p> <p>3 is clear and we're on the same page, Mishmeret</p> <p>4 and then three other bondholders who signed on</p> <p>5 to the petition.</p> <p>6 If I refer to them all as the</p> <p>7 petitioning creditors, is that okay?</p> <p>8 A. That's okay.</p> <p>9 Q. Okay.</p> <p>10 And you're aware that they filed an</p> <p>11 involuntary Chapter 11 case against Fee Owner,</p> <p>12 right?</p> <p>13 A. I am.</p> <p>14 Q. And do you believe that the</p> <p>15 involuntary case moving forward is in the best</p> <p>16 interests of Fee Owner?</p> <p>17 A. Now that it's been filed, yes.</p> <p>18 Q. Why do you say now that it's been</p> <p>19 filed?</p> <p>20 A. Now, that we have the ability to be</p> <p>21 in bankruptcy, I think it -- and where we find</p> <p>22 ourselves, I think we can try to resolve many</p> <p>23 issues at Fee Owner that have been pending.</p> <p>24 Q. Okay.</p> <p>25 Well, prior to it having been</p>	<p style="text-align: right;">Page 19</p> <p>1 E. DIAMOND</p> <p>2 filed -- I'm just trying to understand why you</p> <p>3 answered the question the way you did.</p> <p>4 Prior to it having been filed, at</p> <p>5 that time, did you believe that an involuntary</p> <p>6 bankruptcy was in Fee Owner's best interest?</p> <p>7 MS. GOLDBERG: Object to form.</p> <p>8 A. Prior to which time, the petition?</p> <p>9 Q. That's correct.</p> <p>10 A. If you're asking -- my personal view</p> <p>11 is I, you know, I wasn't -- I didn't think that</p> <p>12 they -- I didn't think that an involuntary</p> <p>13 bankruptcy was necessarily the best path</p> <p>14 forward, you know, prior to the filing.</p> <p>15 But once it was filed, I think it's</p> <p>16 an efficient way for us to move forward and</p> <p>17 resolve all matters at Fee Owner in order to</p> <p>18 enhance the value for everybody.</p> <p>19 Q. Okay.</p> <p>20 When you say that you didn't</p> <p>21 necessarily think it was the best path</p> <p>22 forward --</p> <p>23 A. You would have asked my opinion.</p> <p>24 MS. GOLDBERG: Just let Nick finish</p> <p>25 the question, please.</p>
<p style="text-align: right;">Page 20</p> <p>1 E. DIAMOND</p> <p>2 THE WITNESS: Sorry.</p> <p>3 Q. Well, I think you were starting to</p> <p>4 answer, and I was going to ask you what you</p> <p>5 meant by -- what you meant by that.</p> <p>6 A. My personal opinion was that I don't</p> <p>7 know if I would have filed it. But once it was</p> <p>8 filed, I am supporting of it.</p> <p>9 Q. Why would you not have filed it?</p> <p>10 A. Again, we were in the middle of a</p> <p>11 confirmation proceeding, as you know, for the</p> <p>12 larger case. And I think it was a distraction</p> <p>13 to me, personally, at that time since we were</p> <p>14 trying to move forward.</p> <p>15 Q. Do you have any understanding of</p> <p>16 what anyone else at All Year's -- strike that.</p> <p>17 Do you have any understanding of</p> <p>18 whether anyone else at All Year had a view at</p> <p>19 that time, prior to the filing of the petition,</p> <p>20 as to whether or not it was in the best</p> <p>21 interest of Fee Owner?</p> <p>22 MS. GOLDBERG: Objection.</p> <p>23 A. I don't.</p> <p>24 Q. Well, what you said earlier is that</p> <p>25 you said you personally did not think that an</p>	<p style="text-align: right;">Page 21</p> <p>1 E. DIAMOND</p> <p>2 involuntary bankruptcy was necessarily the best</p> <p>3 path forward.</p> <p>4 What other paths forward could there</p> <p>5 have been?</p> <p>6 MS. GOLDBERG: Objection.</p> <p>7 A. Not filing an involuntary.</p> <p>8 Q. Okay.</p> <p>9 And what would have happened if no</p> <p>10 involuntary was filed?</p> <p>11 A. Well, we -- like I said, we were in</p> <p>12 we were in the middle of a -- trying to keep</p> <p>13 our larger deal together and move forward</p> <p>14 towards confirmation.</p> <p>15 We've had litigation pending against</p> <p>16 your -- your client, as well, as you know. And</p> <p>17 so, that litigation would keep moving forward</p> <p>18 and we would focus there. And then, you know,</p> <p>19 just keep moving forward that way until we had</p> <p>20 solidified our plan and exit for the major, you</p> <p>21 know, for the main case.</p> <p>22 Q. Okay.</p> <p>23 But is it your understanding that at</p> <p>24 some point a path forward for Fee Owner needed</p> <p>25 to be arrived at?</p>

<p style="text-align: right;">Page 22</p> <p>1 E. DIAMOND</p> <p>2 A. Eventually, yeah. We needed to</p> <p>3 resolve those issues that are pending there,</p> <p>4 including the fact that we're not paying our</p> <p>5 mortgage and the fact we have guaranty claims,</p> <p>6 and so on and so forth. Those all have to be</p> <p>7 resolved.</p> <p>8 So your question is, you know,</p> <p>9 whether the timing of that was okay. Like I</p> <p>10 said, I was not supportive of -- in the sense</p> <p>11 of the timing. But eventually, all those</p> <p>12 issues do need to be resolved.</p> <p>13 And a bankruptcy process is</p> <p>14 certainly the most efficient way, and one that</p> <p>15 will allow us to resolve that in the greatest</p> <p>16 -- by enhancing the value for all the</p> <p>17 constituencies at Fee Owner.</p> <p>18 Q. Why is a bankruptcy the most</p> <p>19 efficient way?</p> <p>20 A. Because I think we can deal all of</p> <p>21 the issues in one single form.</p> <p>22 Q. Okay.</p> <p>23 What are all of the issues?</p> <p>24 A. Like I said, the guaranty claims,</p> <p>25 the mortgage claims, issues that we're having</p>	<p style="text-align: right;">Page 23</p> <p>1 E. DIAMOND</p> <p>2 with our lessee.</p> <p>3 And, you know, at the moment we're</p> <p>4 hamstrung in our abilities to resolve those,</p> <p>5 because we have, as you know, the -- your</p> <p>6 client has stopped paying the -- on the lease,</p> <p>7 so we don't have any ability to pay the</p> <p>8 mortgage. We don't have any ability to</p> <p>9 restructure the mortgage because we don't have</p> <p>10 any payments coming. We can't show that we</p> <p>11 have income in order to do that.</p> <p>12 So, like I said, having an efficient</p> <p>13 way to resolve all of those issues is certainly</p> <p>14 in the best interest of all parties, including</p> <p>15 your client, as a 50 percent owner, by the way.</p> <p>16 Q. All right.</p> <p>17 So we'll get into some of those</p> <p>18 comments that you mentioned in more detail in a</p> <p>19 moment.</p> <p>20 But I just want to go back.</p> <p>21 So the question that I asked you</p> <p>22 was: What are -- you had said you thought that</p> <p>23 bankruptcy was the most efficient form to</p> <p>24 resolve all of Fee Owner's issues.</p> <p>25 I asked you: What are all of those</p>
<p style="text-align: right;">Page 24</p> <p>1 E. DIAMOND</p> <p>2 issues?</p> <p>3 You told me the guaranty claims, and</p> <p>4 the mortgage claims, and then issues with the</p> <p>5 lessee; is that right?</p> <p>6 MS. GOLDBERG: Object to the form.</p> <p>7 A. Correct.</p> <p>8 Q. And the -- the guaranty claims, just</p> <p>9 so we're on the same page, that's the claims</p> <p>10 that the Series C bondholders hold against Fee</p> <p>11 Owner under the guaranty of the Series C bonds</p> <p>12 issued by All Year; is that right?</p> <p>13 A. Correct.</p> <p>14 Q. And then the mortgage claim, are you</p> <p>15 generally referring there to the claim that the</p> <p>16 Series C bondholders, by way of assignment from</p> <p>17 All Year, hold against Fee Owner on the -- the</p> <p>18 noted mortgage that was issued in, I think,</p> <p>19 February of 2017?</p> <p>20 A. Correct.</p> <p>21 Q. And then the issues with the lessee</p> <p>22 that you described, those are in the -- those</p> <p>23 are before the New York court in the litigation</p> <p>24 that was commenced in June of 2021; is that</p> <p>25 right?</p>	<p style="text-align: right;">Page 25</p> <p>1 E. DIAMOND</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 So other than the guaranty claims,</p> <p>5 the mortgage claims, and the issues with the</p> <p>6 lessee in the New York litigation, are there</p> <p>7 any other issues of Fee Owner that would be</p> <p>8 resolved in an involuntary case?</p> <p>9 MS. GOLDBERG: Objection.</p> <p>10 A. I couldn't say at this time. There</p> <p>11 may be other issues that come up, that could be</p> <p>12 dealt with.</p> <p>13 Q. So I think you started to touch on</p> <p>14 this a little bit.</p> <p>15 But when considering whether an</p> <p>16 involuntary bankruptcy case is in the best</p> <p>17 interest of Fee Owner, did you consider the</p> <p>18 interests of multiple stakeholders of Fee</p> <p>19 Owner?</p> <p>20 MS. GOLDBERG: Objection.</p> <p>21 A. Yes.</p> <p>22 Q. And which stakeholders' interests</p> <p>23 did you consider?</p> <p>24 A. The creditors and the equity owners.</p> <p>25 Q. When you say the creditors, who are</p>

<p style="text-align: right;">Page 34</p> <p>1 E. DIAMOND</p> <p>2 will represent to you this is, and you'll see</p> <p>3 the Bates stamp at the top, but this is the</p> <p>4 answer that Fee Owner filed in response to the</p> <p>5 involuntary petition.</p> <p>6 And if you would scroll to page 16</p> <p>7 of the PDF, you will find a document entitled</p> <p>8 declaration of yourself in support of the</p> <p>9 answer.</p> <p>10 A. Okay.</p> <p>11 Q. Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Do you recognize this document?</p> <p>14 A. I do.</p> <p>15 Q. Did you prepare this declaration?</p> <p>16 A. I worked together with my counsel on</p> <p>17 it.</p> <p>18 Q. And is it -- and you authorized the</p> <p>19 electronic signature of this document on</p> <p>20 page 9?</p> <p>21 A. Yes. Oh, yes, that I authorized it.</p> <p>22 I don't know that it's on page 9. I</p> <p>23 didn't scroll that fast.</p> <p>24 Q. That's okay.</p> <p>25 And would everything in this</p>	<p style="text-align: right;">Page 35</p> <p>1 E. DIAMOND</p> <p>2 declaration be true and accurate, as far as you</p> <p>3 know?</p> <p>4 A. To the best of my knowledge.</p> <p>5 Q. Okay.</p> <p>6 Could you please scroll to page 10,</p> <p>7 internal page 10 of the document, which also is</p> <p>8 page 10 of the PDF, I guess.</p> <p>9 A. I'm sorry. My declaration or?</p> <p>10 Q. Oh, I'm sorry.</p> <p>11 I -- I -- your declaration and the</p> <p>12 answer are very similar.</p> <p>13 So I was looking at the wrong</p> <p>14 document for a moment.</p> <p>15 MS. GOLDBERG: So it is page 10 of</p> <p>16 the answer?</p> <p>17 MR. BASSETT: No, I'm sorry. I went</p> <p>18 to the wrong document on my screen. I</p> <p>19 meant to stay in his declaration.</p> <p>20 BY MR. BASSETT:</p> <p>21 Q. So this is page 8 of your</p> <p>22 declaration, which is page 23 of the PDF.</p> <p>23 A. Okay.</p> <p>24 Q. And do you see where it says at the</p> <p>25 top of that page, LLC agreement restrictions on</p>
<p style="text-align: right;">Page 36</p> <p>1 E. DIAMOND</p> <p>2 consent to bankruptcy proceedings?</p> <p>3 A. Correct.</p> <p>4 Q. Okay.</p> <p>5 And then the paragraph 32 talks</p> <p>6 about Section 5.25, which we were just looking</p> <p>7 at.</p> <p>8 And then paragraph 33 says, under</p> <p>9 Section 5.10 (as read): Managing member -- and</p> <p>10 that is defined earlier as YGVW -- is similarly</p> <p>11 barred from, without unanimous consent of</p> <p>12 members, causing any direct or indirect</p> <p>13 subsidiary of Member LLC to take any of the</p> <p>14 foregoing actions.</p> <p>15 Do you see that?</p> <p>16 A. I see that.</p> <p>17 Q. Okay.</p> <p>18 So now, do you recall, is it your</p> <p>19 understanding that Section 5.25 of Exhibit 1</p> <p>20 that we were looking at also applies to actions</p> <p>21 that Member LLC would take on behalf of Fee</p> <p>22 Owner?</p> <p>23 MS. GOLDBERG: Objection.</p> <p>24 A. I would have to see the sections</p> <p>25 again. I'm sorry.</p>	<p style="text-align: right;">Page 37</p> <p>1 E. DIAMOND</p> <p>2 I mean, I see what's written.</p> <p>3 Q. Okay.</p> <p>4 Well, I mean you -- okay.</p> <p>5 Let's look back at Exhibit 1 then.</p> <p>6 We were on page 5. If you scroll</p> <p>7 down to page 6, you'll see Section 5.2.10.</p> <p>8 A. Okay.</p> <p>9 Q. And I think your declaration</p> <p>10 actually may have had a typo in that it</p> <p>11 referred in paragraph 33 to 5.10 instead of</p> <p>12 5.2.10.</p> <p>13 (Document review.)</p> <p>14 Q. So I'll ask my question again.</p> <p>15 Do you understand that those</p> <p>16 restrictions in Section 5.2.5 that we had</p> <p>17 discussed apply to actions that Member LLC</p> <p>18 would take on behalf of Fee Owner?</p> <p>19 MS. GOLDBERG: Objection.</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 And do you have a view as to whether</p> <p>23 the things we discussed that Fee Owner has</p> <p>24 filed with the Court and the positions that it</p> <p>25 has taken with the Court, whether those things</p>



<p style="text-align: right;">Page 38</p> <p>1 E. DIAMOND</p> <p>2 are consistent with Sections 5.25 and Sections</p> <p>3 5.2.10 of the Member LLC agreement?</p> <p>4 MS. GOLDBERG: Objection.</p> <p>5 Calls for a legal conclusion.</p> <p>6 BY MR. BASSETT:</p> <p>7 Q. You can answer.</p> <p>8 A. It is my understanding with, after</p> <p>9 consulting with counsel, that we --</p> <p>10 MS. GOLDBERG: Please, I don't want</p> <p>11 you to testify about anything that you</p> <p>12 spoke about with counsel.</p> <p>13 THE WITNESS: Okay.</p> <p>14 MS. GOLDBERG: Can you answer the</p> <p>15 question without disclosing privileged</p> <p>16 communications with counsel?</p> <p>17 THE WITNESS: No.</p> <p>18 BY MR. BASSETT:</p> <p>19 Q. Well, as a layperson, not a lawyer,</p> <p>20 you understand what it means to consent to</p> <p>21 something, right?</p> <p>22 A. Yes.</p> <p>23 Q. How would you define what that</p> <p>24 means?</p> <p>25 A. Gosh. How would I define consent?</p>	<p style="text-align: right;">Page 39</p> <p>1 E. DIAMOND</p> <p>2 It's a fraught question nowadays.</p> <p>3 Consent, I mean, either supporting,</p> <p>4 agreeing to.</p> <p>5 Q. Thank you.</p> <p>6 Sorry. Let me -- just give me one</p> <p>7 moment, please.</p> <p>8 A. Sure.</p> <p>9 (Document review.)</p> <p>10 BY MR. BASSETT:</p> <p>11 Q. So, Mr. Diamond, you said you were</p> <p>12 appointed to be the associate restructuring</p> <p>13 officer of All Year in December of 2020; is</p> <p>14 that right?</p> <p>15 A. December 30th, I believe, 2020.</p> <p>16 Q. December 30, 2020. Okay.</p> <p>17 And how did you come to be involved</p> <p>18 with All Year and end up taking that position?</p> <p>19 A. How did I -- I had previously been</p> <p>20 working for an unrelated company that had</p> <p>21 issued bonds in Israel, doing a restructuring</p> <p>22 for them. And as that was winding down, I had</p> <p>23 heard that All Year was having some financial</p> <p>24 issues and trouble, and reached out to the</p> <p>25 board of directors of All Year to see if they</p>
<p style="text-align: right;">Page 40</p> <p>1 E. DIAMOND</p> <p>2 could use some help.</p> <p>3 And as luck would have it, they did.</p> <p>4 Q. So you reached out affirmatively to</p> <p>5 the board of directors of All Year to see if</p> <p>6 they could use help?</p> <p>7 A. Correct.</p> <p>8 Q. Anyone specific on the board?</p> <p>9 A. I don't recall. I think it was -- I</p> <p>10 reached -- I find out who their counsel was.</p> <p>11 Q. And who was that?</p> <p>12 A. The woman I spoke with was Sherrell</p> <p>13 Guttman (phonetic).</p> <p>14 Q. And is she at a law firm?</p> <p>15 A. She is. She's a lawyer.</p> <p>16 Q. At what law firm?</p> <p>17 A. I -- I don't recall. She's no</p> <p>18 longer -- she was representing some of the</p> <p>19 independent directors back then.</p> <p>20 Q. Okay.</p> <p>21 Prior to this case, did you have any</p> <p>22 relationship with Yoel Goldman?</p> <p>23 A. No.</p> <p>24 Q. Did you speak to him prior to your</p> <p>25 appointment?</p>	<p style="text-align: right;">Page 41</p> <p>1 E. DIAMOND</p> <p>2 A. I don't -- I don't recall.</p> <p>3 Q. Did you speak to anyone -- you know</p> <p>4 who Mishmeret -- am I pronouncing that</p> <p>5 correctly, from your perspective?</p> <p>6 A. Mishmeret, yeah.</p> <p>7 Q. You're familiar with Mishmeret Trust</p> <p>8 Company?</p> <p>9 A. I am now.</p> <p>10 Q. And what's their role in this case?</p> <p>11 A. They are the trustee for the various</p> <p>12 series of bonds, All Year.</p> <p>13 Q. The B through E?</p> <p>14 A. B through E.</p> <p>15 Q. And did you have any contact with</p> <p>16 anyone at Mishmeret prior to your appointment?</p> <p>17 A. I may have spoken with somebody.</p> <p>18 Once I was being vetted, I think I spoke with</p> <p>19 somebody either from Mishmeret or one of their</p> <p>20 lawyers.</p> <p>21 Q. How about -- are you aware that</p> <p>22 there's a committee of Series C bondholders?</p> <p>23 A. No.</p> <p>24 Q. Are you aware of a person named</p> <p>25 Osnat Tenenbaum, for example?</p>

<p style="text-align: right;">Page 50</p> <p>1 E. DIAMOND</p> <p>2 I'm sorry, sorry. I'm thinking the</p> <p>3 wrong way. It was after the housing bubble</p> <p>4 burst, not before.</p> <p>5 Q. Oh, okay.</p> <p>6 A. It must have been like 2010, '11.</p> <p>7 Q. Got it. Got it. Okay.</p> <p>8 Any other involuntary cases you</p> <p>9 recall?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Before I asked you if you had -- had</p> <p>12 been deposed, and we talked about that. I</p> <p>13 think you said once when you were at Paul</p> <p>14 Weiss.</p> <p>15 I'm not sure if I asked you, have</p> <p>16 you ever testified in court before?</p> <p>17 A. No.</p> <p>18 Q. I assume you submitted declarations</p> <p>19 before in past cases, though, right?</p> <p>20 A. I've submitted, yes.</p> <p>21 Q. Okay.</p> <p>22 Fee Owner's counsel in this matter</p> <p>23 is the Herrick law firm, right?</p> <p>24 A. Correct.</p> <p>25 MR. MEHLMAN: Herrick, Feinstein.</p>	<p style="text-align: right;">Page 51</p> <p>1 E. DIAMOND</p> <p>2 Q. Herrick, Feinstein.</p> <p>3 Does Herrick -- does Herrick also</p> <p>4 serve as counsel to YGWV?</p> <p>5 A. I'm -- I don't think so.</p> <p>6 Q. Does Herrick also serve as counsel</p> <p>7 to All Year?</p> <p>8 A. No.</p> <p>9 Q. Herrick is not counsel to All Year?</p> <p>10 A. I don't believe we've -- I don't</p> <p>11 think they've been retained by All Year.</p> <p>12 Q. Does Herrick represent Fee Owner in</p> <p>13 the state court litigation?</p> <p>14 A. Yes.</p> <p>15 Q. Does Fee Owner engage in any other</p> <p>16 business other than leasing the William Vale</p> <p>17 hotel complex to Wythe Berry LLC?</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. What's your understanding of the</p> <p>20 assets that Fee Owner owns?</p> <p>21 A. Fee Owner owns -- my understanding</p> <p>22 is that it owns the ground and the building</p> <p>23 upon which the hotel, you know, the physical</p> <p>24 plant of the hotel, and the office complex and</p> <p>25 parking.</p>
<p style="text-align: right;">Page 52</p> <p>1 E. DIAMOND</p> <p>2 Q. And is it okay if we refer to that</p> <p>3 as the William Vale complex today?</p> <p>4 A. Sure.</p> <p>5 Q. Does, to your knowledge, Fee Owner</p> <p>6 own any other assets other than the William</p> <p>7 Vale complex?</p> <p>8 A. Not that I'm aware of.</p> <p>9 Q. One second.</p> <p>10 If I could direct your attention to</p> <p>11 Exhibit 2, which is your declaration.</p> <p>12 It's Tab 2, also.</p> <p>13 A. Okay.</p> <p>14 Q. I'd like you to look at paragraph 3,</p> <p>15 please.</p> <p>16 And in particular -- well, I'll just</p> <p>17 read it to you, and you can read it yourself as</p> <p>18 well.</p> <p>19 But it says (as read): As a result</p> <p>20 of Weiss's obstruction, Fee Owner now finds</p> <p>21 itself embroiled in multiple litigations and</p> <p>22 faces the prospect of imminent foreclosure with</p> <p>23 few means available other than proceeding as a</p> <p>24 Chapter 11 debtor in possession to remedy the</p> <p>25 situation.</p>	<p style="text-align: right;">Page 53</p> <p>1 E. DIAMOND</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. When you said that Fee Owner finds</p> <p>5 itself embroiled in multiple litigations, what</p> <p>6 litigations were you referring to?</p> <p>7 A. The state litigation, where, you</p> <p>8 know, where we're suing your client for</p> <p>9 nonpayments.</p> <p>10 And also, obviously, now the</p> <p>11 involuntary. We're involved in that as well.</p> <p>12 Q. Any other litigations?</p> <p>13 A. Subsequent, we were also -- I don't</p> <p>14 remember the exact date, but I think there's</p> <p>15 now some mechanic lien litigation that was</p> <p>16 initiated because apparently your client</p> <p>17 stopped paying his vendors.</p> <p>18 Q. When you say apparently my client</p> <p>19 stopped paying his vendors, what's your basis</p> <p>20 for that statement?</p> <p>21 A. Because they're mechanic liens and</p> <p>22 they're, you know, like he's running the</p> <p>23 operations of the hotel. So presumably, they</p> <p>24 arose from services he requested.</p> <p>25 Q. Do you understand -- well, are you</p>

<p style="text-align: right;">Page 54</p> <p>1 E. DIAMOND</p> <p>2 familiar with the particular mechanic's liens</p> <p>3 that have been asserted?</p> <p>4 A. No, not specifically.</p> <p>5 Q. And is it possible that those</p> <p>6 mechanic's liens resulted from the failure of a</p> <p>7 sublessee to make payments?</p> <p>8 MS. GOLDBERG: Objection.</p> <p>9 A. I believe many of the sublessees are</p> <p>10 your client as well. That's my understanding,</p> <p>11 so, I guess.</p> <p>12 Q. Is it -- is it possible that those</p> <p>13 mechanic's liens could have resulted from a</p> <p>14 sublessee that's not controlled by my client?</p> <p>15 MS. GOLDBERG: Objection.</p> <p>16 A. Anything is possible.</p> <p>17 Q. Yes.</p> <p>18 You wouldn't know if that were true,</p> <p>19 right?</p> <p>20 MS. GOLDBERG: Objection.</p> <p>21 A. Sitting here today, no.</p> <p>22 Q. When you said there's -- you think</p> <p>23 there's litigation related to mechanic's liens,</p> <p>24 what litigation are you referring to?</p> <p>25 A. Litigation -- I mean, I think there</p>	<p style="text-align: right;">Page 55</p> <p>1 E. DIAMOND</p> <p>2 was a lawsuit filed.</p> <p>3 Q. How many mechanic's liens are you</p> <p>4 aware of?</p> <p>5 A. One or two offhand.</p> <p>6 Q. Do you -- what are those, do you</p> <p>7 remember?</p> <p>8 A. I don't remember offhand.</p> <p>9 Q. And you think one of those two --</p> <p>10 one of those two parties that asserted a</p> <p>11 mechanic's lien has also filed litigation?</p> <p>12 A. Correct.</p> <p>13 Q. Okay.</p> <p>14 So you're aware of that mechanic's</p> <p>15 lien litigation, the New York State Court</p> <p>16 litigation, and this involuntary.</p> <p>17 Is there any other litigation that</p> <p>18 Fee Owner is involved in?</p> <p>19 A. Well, there was an adversary</p> <p>20 proceeding. But I don't recall if Fee Owner</p> <p>21 was a named party offhand.</p> <p>22 Q. Anything else?</p> <p>23 A. But that's been resolved in our</p> <p>24 favor.</p> <p>25 Q. Anything else?</p>
<p style="text-align: right;">Page 56</p> <p>1 E. DIAMOND</p> <p>2 A. Not that I can recall.</p> <p>3 Q. And just to be clear, I was asking</p> <p>4 you about paragraph 3 of your declaration.</p> <p>5 Were you aware of this mechanic lien</p> <p>6 litigation at the time you signed this</p> <p>7 declaration?</p> <p>8 A. I don't recall.</p> <p>9 Q. Paragraph 3 also says that -- well,</p> <p>10 before I go there. We may have covered this</p> <p>11 partially before, but I'm going to ask it more</p> <p>12 generally.</p> <p>13 Can you tell me all of the claims</p> <p>14 that have been asserted against Fee Owner --</p> <p>15 MS. GOLDBERG: Objection.</p> <p>16 Q. -- by persons who purport to be</p> <p>17 creditors of Fee Owner?</p> <p>18 MS. GOLDBERG: Sorry. Objection.</p> <p>19 Sorry, Nick. I didn't mean to cut</p> <p>20 you off.</p> <p>21 MR. BASSETT: That's okay.</p> <p>22 A. Say that again.</p> <p>23 Q. I want to understand all of the</p> <p>24 claims that you are aware of that have been</p> <p>25 asserted against Fee Owner by potential</p>	<p style="text-align: right;">Page 57</p> <p>1 E. DIAMOND</p> <p>2 creditors.</p> <p>3 MS. GOLDBERG: Objection.</p> <p>4 A. All of the claims asserted by</p> <p>5 potential --</p> <p>6 Q. Strike that.</p> <p>7 Maybe the word asserted is</p> <p>8 misleading.</p> <p>9 I just want to understand your --</p> <p>10 what you know about the universe of claims that</p> <p>11 exist against Fee Owner.</p> <p>12 A. To the best of my knowledge, we have</p> <p>13 claims being asserted by -- we have claims by</p> <p>14 our bond Cs, both in a guaranty form and also</p> <p>15 as part of the mortgage.</p> <p>16 And now, I've become aware of some</p> <p>17 mechanic liens as well. Although, you know,</p> <p>18 other than those, I'm not aware of any.</p> <p>19 Q. Well, do you have an understanding,</p> <p>20 does a holder of a mechanic's lien actually</p> <p>21 have a claim against the -- against, in this</p> <p>22 case, Fee Owner?</p> <p>23 MS. GOLDBERG: Objection.</p> <p>24 Calls for a legal conclusion.</p> <p>25 A. I -- I know they've been asserted</p>

<p style="text-align: right;">Page 58</p> <p>1 E. DIAMOND</p> <p>2 against Fee Owner. You know, I -- I don't know</p> <p>3 if they're -- you know, I would have to ask</p> <p>4 counsel if they would be claims or not, or how</p> <p>5 you would characterize them.</p> <p>6 Q. Okay.</p> <p>7 Well, a mechanic's lien is a lien</p> <p>8 that's asserted against property, right?</p> <p>9 MS. GOLDBERG: Objection.</p> <p>10 A. Correct.</p> <p>11 Q. And -- and is it -- do you have any</p> <p>12 understanding as to whether or not that holder</p> <p>13 of that mechanic's lien also has a claim</p> <p>14 against the owner of the property?</p> <p>15 MS. GOLDBERG: Objection.</p> <p>16 A. I don't.</p> <p>17 Q. So other than the Series C bond</p> <p>18 claims, and potentially these mechanic</p> <p>19 lienholder's claims, are you aware of any other</p> <p>20 claims against Fee Owner?</p> <p>21 A. Sitting here today, I'm not aware of</p> <p>22 any other claims. But that's also because we</p> <p>23 don't have perfect information about the hotel.</p> <p>24 As you've know, we've been asking</p> <p>25 your client for information for quite a long</p>	<p style="text-align: right;">Page 59</p> <p>1 E. DIAMOND</p> <p>2 time. And so, sitting here today, that's the</p> <p>3 universe of claims that I know of.</p> <p>4 Q. Okay.</p> <p>5 Also, in paragraph 3, you say that</p> <p>6 Fee Owner faces the prospect of imminent</p> <p>7 foreclosure.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. What's the basis for that statement?</p> <p>11 A. The basis for that statement is that</p> <p>12 we haven't been able to pay our mortgage</p> <p>13 because your client hasn't been paying the</p> <p>14 lease payments.</p> <p>15 And so, the holder of the mortgage</p> <p>16 has been demanding payment and, you know, their</p> <p>17 rights are to foreclose against us.</p> <p>18 Q. When was there first a default under</p> <p>19 the mortgage?</p> <p>20 A. I believe February 2021. The first</p> <p>21 time your -- the first time your client failed</p> <p>22 to pay.</p> <p>23 Q. So is what you're saying that --</p> <p>24 what your testimony is, is that Fee Owner has</p> <p>25 been facing the prospect of imminent</p>
<p style="text-align: right;">Page 60</p> <p>1 E. DIAMOND</p> <p>2 foreclosure since February 2021?</p> <p>3 MS. GOLDBERG: Objection.</p> <p>4 A. We've been facing the prospect of</p> <p>5 foreclosure since then, yes.</p> <p>6 Q. Why do you say in paragraph 3 that</p> <p>7 foreclosure is now imminent?</p> <p>8 A. Well, as -- you know, it's been</p> <p>9 almost two years since we've been in there.</p> <p>10 And I think, as you know, witnessed by the</p> <p>11 filing of the involuntary, the creditors have</p> <p>12 gotten restive again. So...</p> <p>13 Q. Have the creditors ever told you --</p> <p>14 and when you say creditors, you mean the Series</p> <p>15 C bondholders, right?</p> <p>16 A. Correct.</p> <p>17 Q. Have they ever told you that they</p> <p>18 were planning to foreclose on the William Vale</p> <p>19 complex?</p> <p>20 MS. GOLDBERG: Objection.</p> <p>21 A. I don't recall.</p> <p>22 Q. Other than the fact that the</p> <p>23 involuntary was filed, is there any other</p> <p>24 reason why you believe foreclosure is imminent?</p> <p>25 A. Nothing specific.</p>	<p style="text-align: right;">Page 61</p> <p>1 E. DIAMOND</p> <p>2 Q. You also say in paragraph 3 that Fee</p> <p>3 Owner has been left with few means available</p> <p>4 other than proceeding as a Chapter 11 debtor in</p> <p>5 possession to remedy their situation.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. So you said few means available</p> <p>9 other than proceeding as a Chapter 11 debtor.</p> <p>10 So what were the other means</p> <p>11 available as of the date you wrote this</p> <p>12 declaration?</p> <p>13 A. I --</p> <p>14 Q. If you recall.</p> <p>15 A. Sorry?</p> <p>16 Q. I'm just asking you what you meant</p> <p>17 there.</p> <p>18 So what were the few other available</p> <p>19 means that Fee Owner could've used to remedy</p> <p>20 its situation?</p> <p>21 A. Well, with few means meaning almost</p> <p>22 no means. All right. With almost no means,</p> <p>23 with few means available.</p> <p>24 I mean, a negotiation was always</p> <p>25 available. But it wasn't getting anywhere</p>

<p style="text-align: right;">Page 78</p> <p>1 E. DIAMOND</p> <p>2 A. Yes.</p> <p>3 Q. Has the Court, to your knowledge,</p> <p>4 ruled on the merits of that claim for default</p> <p>5 for that reason?</p> <p>6 MS. GOLDBERG: Objection.</p> <p>7 Calls for legal conclusion.</p> <p>8 A. I don't think the Court has yet</p> <p>9 ruled on that.</p> <p>10 Q. Prior to the litigation being</p> <p>11 commenced, are you aware that there were some</p> <p>12 discussions that occurred between Mr. Weiss,</p> <p>13 All Year, and Mishmeret about potential</p> <p>14 resolution of disputes under the note and</p> <p>15 mortgage?</p> <p>16 A. What was the time frame?</p> <p>17 Q. Prior to the June 2021 litigation,</p> <p>18 in or around May of 2021.</p> <p>19 A. I know there have been various</p> <p>20 discussions throughout time. I don't recall</p> <p>21 specifically the time frame, you know, prior to</p> <p>22 the litigation.</p> <p>23 Q. Do you recall any discussion at or</p> <p>24 around that time with Mr. Weiss and with Wythe</p> <p>25 Berry lessee about the entry into a potential</p>	<p style="text-align: right;">Page 79</p> <p>1 E. DIAMOND</p> <p>2 nondisclosure agreement?</p> <p>3 A. I remember there was a discussion</p> <p>4 regarding that, yes.</p> <p>5 Q. I'm going to ask my colleague if he</p> <p>6 could put that document on the screen, please.</p> <p>7 MS. GOLDBERG: And, Nick, I just</p> <p>8 want to say that I think this is kind of</p> <p>9 far afield from the reasons why we're here</p> <p>10 today. So we'll allow some limited</p> <p>11 questioning.</p> <p>12 But I hope you're not planning to</p> <p>13 take up a lot of time on this.</p> <p>14 MR. BASSETT: Well, I'm not -- I'm</p> <p>15 not planning to take up necessarily a lot</p> <p>16 of time.</p> <p>17 And hopefully, frankly, I hope this</p> <p>18 deposition does not take too long at all.</p> <p>19 But I do think this line of inquiry</p> <p>20 is relevant, especially considering</p> <p>21 Mr. Diamond's testimony about the other</p> <p>22 available option of negotiating a solution.</p> <p>23 And also -- and also about this</p> <p>24 information regarding, you know,</p> <p>25 information, nondisclosure in particular.</p>
<p style="text-align: right;">Page 80</p> <p>1 E. DIAMOND</p> <p>2 That's why this line of questioning is</p> <p>3 relevant.</p> <p>4 MS. GOLDBERG: Well, I will</p> <p>5 respectfully disagree.</p> <p>6 But I said we'll allow it for some</p> <p>7 time. And hopefully, it just is not going</p> <p>8 to be a lot of time at this deposition.</p> <p>9 MR. BASSETT: Okay.</p> <p>10 BY MR. BASSETT:</p> <p>11 Q. So, Mr. Diamond, this document that</p> <p>12 I've put on the screen will be marked by the</p> <p>13 court reporter as Diamond Exhibit 4.</p> <p>14 (Diamond Exhibit 4, Nondisclosure</p> <p>15 Agreement, marked for identification.)</p> <p>16 BY Diamond</p> <p>17 Q. Mr. Diamond, do you recognize this</p> <p>18 document?</p> <p>19 A. Not this one specific. I mean, it</p> <p>20 looks familiar.</p> <p>21 Q. Okay.</p> <p>22 Is it possible that this is draft of</p> <p>23 a nondisclosure agreement -- strike that.</p> <p>24 Do you recognize this as a</p> <p>25 nondisclosure agreement that had been</p>	<p style="text-align: right;">Page 81</p> <p>1 E. DIAMOND</p> <p>2 negotiated between Mr. Weiss and All Year with</p> <p>3 respect to the disclosure of confidential</p> <p>4 information?</p> <p>5 MS. GOLDBERG: Objection.</p> <p>6 A. I mean, that's what it purports to</p> <p>7 be. I know there was some draft</p> <p>8 back-and-forth. I don't know which version</p> <p>9 this is.</p> <p>10 Q. Did you have any involvement in that</p> <p>11 back-and-forth?</p> <p>12 A. Yes.</p> <p>13 Q. And what was your involvement?</p> <p>14 A. Just on behalf of the company,</p> <p>15 trying to negotiate a nondisclosure agreement.</p> <p>16 Q. So you were leading that effort on</p> <p>17 behalf of the company?</p> <p>18 MS. GOLDBERG: Objection.</p> <p>19 A. I don't recall if I was leading it.</p> <p>20 Q. Okay.</p> <p>21 Do you recall if this nondisclosure</p> <p>22 agreement was ultimately executed?</p> <p>23 MS. GOLDBERG: Objection.</p> <p>24 A. A nondisclosure agreement was never</p> <p>25 signed.</p>

<p style="text-align: right;">Page 82</p> <p>1 E. DIAMOND</p> <p>2 Q. And do you have any understanding of</p> <p>3 why not?</p> <p>4 A. My recollection is that we couldn't</p> <p>5 get to an agreement on the terms and the</p> <p>6 negotiation since fell away.</p> <p>7 Q. Do you recall anything about why you</p> <p>8 were not able to reach an agreement on the</p> <p>9 terms?</p> <p>10 A. My recollection is that the demands</p> <p>11 -- we were being asked to circumscribe our</p> <p>12 rights under the -- under our current -- the</p> <p>13 NDA was going to limit our rights that were</p> <p>14 under our current, you know, under the lease.</p> <p>15 And so, we felt like ultimately that</p> <p>16 those were terms we couldn't live with.</p> <p>17 Q. So it was -- it was All Year's</p> <p>18 decision?</p> <p>19 MR. BASSETT: I'm getting background</p> <p>20 noise from somewhere.</p> <p>21 MS. GOLDBERG: Yeah, it's actually</p> <p>22 outside of the conference room.</p> <p>23 Let me just poke my head out and --</p> <p>24 THE WITNESS: Scream at them.</p> <p>25 MS. GOLDBERG: Please just hold the</p>	<p style="text-align: right;">Page 83</p> <p>1 E. DIAMOND</p> <p>2 question.</p> <p>3 THE WITNESS: Yeah, sure.</p> <p>4 MS. GOLDBERG: Sorry about that.</p> <p>5 A. Can you repeat the question.</p> <p>6 Q. Sure.</p> <p>7 So it was All Year's decision</p> <p>8 ultimately not to sign an NDA with Mr. Weiss?</p> <p>9 MS. GOLDBERG: Objection.</p> <p>10 A. I mean, we certainly made a</p> <p>11 decision. I think -- I don't know if it was</p> <p>12 just ours. It could have been Mr. Weiss's.</p> <p>13 I don't remember how it concluded.</p> <p>14 Q. Was Mishmeret, or were the Series C</p> <p>15 bondholders involved at all in the decision of</p> <p>16 whether or not to enter into a nondisclosure</p> <p>17 agreement with Mr. Weiss?</p> <p>18 A. I don't recall specifically.</p> <p>19 Q. Do you ever recall getting to a</p> <p>20 point where there was a final draft of a</p> <p>21 nondisclosure agreement that was ready to be</p> <p>22 executed?</p> <p>23 MS. GOLDBERG: Objection.</p> <p>24 A. I don't recall. Like I said, there</p> <p>25 were many drafts back and forth.</p>
<p style="text-align: right;">Page 84</p> <p>1 E. DIAMOND</p> <p>2 Q. Who -- and was the idea while this</p> <p>3 was being negotiated that this nondisclosure</p> <p>4 agreement would allow for the provision of the</p> <p>5 information that Fee Owner ultimately ended up</p> <p>6 seeking in the New York litigation?</p> <p>7 MS. GOLDBERG: Objection.</p> <p>8 A. I'm sorry. I didn't follow that.</p> <p>9 Q. Well, we discussed earlier that, you</p> <p>10 know, one of the claims in the New York</p> <p>11 litigation is that All Year -- sorry, one of</p> <p>12 the claims we discussed earlier is that one of</p> <p>13 the -- strike that again.</p> <p>14 Earlier, we discussed that one of</p> <p>15 the claims in the New York litigation brought</p> <p>16 by Fee Owner is that Wythe Berry LLC has</p> <p>17 breached an obligation to provide certain</p> <p>18 information, right?</p> <p>19 A. Correct.</p> <p>20 Q. And what I'm asking is whether it's</p> <p>21 your understanding that this nondisclosure</p> <p>22 agreement or some other version of it that was</p> <p>23 being negotiated, generally whether the idea</p> <p>24 was that this nondisclosure agreement would</p> <p>25 provide for the provision of that same</p>	<p style="text-align: right;">Page 85</p> <p>1 E. DIAMOND</p> <p>2 information?</p> <p>3 MS. GOLDBERG: Objection.</p> <p>4 A. I don't recall if this, the</p> <p>5 provision, the information being sought between</p> <p>6 both of them was, you know, coterminous.</p> <p>7 But -- and whether or not the</p> <p>8 provision under the nondisclosure agreement</p> <p>9 would've satisfied the -- if that's your</p> <p>10 question. I don't know.</p> <p>11 Q. Okay.</p> <p>12 But was it the same type of</p> <p>13 information generally?</p> <p>14 MS. GOLDBERG: Objection.</p> <p>15 A. Generally, yeah, because it's the</p> <p>16 same relevant information.</p> <p>17 Q. Okay.</p> <p>18 Who was counsel to Fee Owner at the</p> <p>19 time of the negotiation of the NDA?</p> <p>20 A. I don't recall who was representing</p> <p>21 us then.</p> <p>22 Q. Had -- had Fee Owner retained</p> <p>23 Herrick at that time?</p> <p>24 A. I don't believe so.</p> <p>25 Q. When was Herrick retained?</p>

<p style="text-align: right;">Page 86</p> <p>1 E. DIAMOND</p> <p>2 A. Around the time the litigation was</p> <p>3 commenced.</p> <p>4 Q. So Herrick was retained for the</p> <p>5 purpose of commencing the litigation?</p> <p>6 A. Correct.</p> <p>7 Q. Another claim in the New York</p> <p>8 litigation that we discussed was -- well, there</p> <p>9 were two claims.</p> <p>10 One, there was a claim that Fee</p> <p>11 Owner brought asking for a declaration that the</p> <p>12 lease had been terminated, right?</p> <p>13 A. I believe so, yes.</p> <p>14 Q. And then another claim asking for</p> <p>15 ejectment; is that right?</p> <p>16 A. I'll take your word for it. Okay.</p> <p>17 Q. Well, to your knowledge, has the New</p> <p>18 York court issued a ruling, a final ruling on</p> <p>19 either of those claims?</p> <p>20 MS. GOLDBERG: Objection.</p> <p>21 A. No.</p> <p>22 Q. And do you understand that Mr. Weiss</p> <p>23 is contesting those claims?</p> <p>24 MS. GOLDBERG: Objection.</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 87</p> <p>1 E. DIAMOND</p> <p>2 Q. And you understand that Wythe Berry</p> <p>3 LLC is also contesting those claims?</p> <p>4 MS. GOLDBERG: Objection.</p> <p>5 A. Correct.</p> <p>6 Q. Are you aware that in the New York</p> <p>7 litigation, Fee Owner sought a preliminary</p> <p>8 injunction to enjoin Wythe Berry LLC from</p> <p>9 advertising or entering into new leases on the</p> <p>10 premises on the grounds that Fee Owner had</p> <p>11 asked the Court in the litigation to have Wythe</p> <p>12 Berry LLC ejected from the premises?</p> <p>13 MS. GOLDBERG: Objection.</p> <p>14 A. Not to my recollection.</p> <p>15 Q. And are you aware of if the Court</p> <p>16 ever issued a ruling on that request for</p> <p>17 preliminary injunction?</p> <p>18 A. I believe the Court entered an order</p> <p>19 or issued a ruling.</p> <p>20 Q. And what did that ruling say?</p> <p>21 A. I don't remember the specifics. But</p> <p>22 maybe some granting the lessee some limited</p> <p>23 rights to continue to do so.</p> <p>24 But I don't recall specifically.</p> <p>25 Q. Do you recall if the Court denied</p>
<p style="text-align: right;">Page 88</p> <p>1 E. DIAMOND</p> <p>2 the preliminary injunction?</p> <p>3 A. I don't remember specifically.</p> <p>4 MR. BASSETT: Will, can you put the</p> <p>5 December 6th order on the page, please.</p> <p>6 MS. GOLDBERG: Nick, again, I'm --</p> <p>7 are we going to go through the entire</p> <p>8 procedural history of the New York</p> <p>9 litigation in this deposition?</p> <p>10 I don't see what the purpose of that</p> <p>11 is for the issues that are going to be</p> <p>12 addressed by the Court in a week.</p> <p>13 MR. BASSETT: I will caveat all of</p> <p>14 my questions, Janice, on this topic with</p> <p>15 the fact that I agree with you that all of</p> <p>16 the procedural history of the New York</p> <p>17 litigation is not relevant.</p> <p>18 The problem that I have is that</p> <p>19 Mr. Diamond, in his declaration, and Fee</p> <p>20 Owner, in its answer, have chronicled the</p> <p>21 entire history. So I -- no, I don't see</p> <p>22 how I cannot ask some of these questions.</p> <p>23 MS. GOLDBERG: Well, you know, in</p> <p>24 the adversary proceeding there was a joint</p> <p>25 stipulations of facts as to certain events</p>	<p style="text-align: right;">Page 89</p> <p>1 E. DIAMOND</p> <p>2 that had occurred.</p> <p>3 So I think that's one way that this</p> <p>4 could resolved without needing to spend</p> <p>5 time in this deposition asking these</p> <p>6 questions.</p> <p>7 Because I don't really think that</p> <p>8 there's any factual dispute about what</p> <p>9 procedurally has occurred.</p> <p>10 MR. BASSETT: All right.</p> <p>11 I'll tell you what. I don't agree</p> <p>12 that -- that there's not a need for us to</p> <p>13 explore these topics.</p> <p>14 Again, the only reason I'm doing it</p> <p>15 is because they were put at issue in the</p> <p>16 declaration. I otherwise wouldn't be.</p> <p>17 And I, you know, reserve all rights</p> <p>18 with respect to whether it's appropriate to</p> <p>19 ask Mr. Weiss these questions. I think</p> <p>20 it's absolutely not, because we didn't put</p> <p>21 them at issue.</p> <p>22 But I'll tell you what, for right</p> <p>23 now, I won't ask about that particular</p> <p>24 document because I think the December 6th</p> <p>25 order speaks for itself.</p>

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1 E. DIAMOND

2 Q. Generally familiar with its terms,

3 at least at a high level?

4 A. Yes.

5 Q. Is it -- is it your understanding

6 that the All Year plan, as it currently exists,

7 would transfer All Year's membership interest

8 -- strike that.

9 Is it your understanding that under

10 the All Year plan, All Year's interest in YGJV

11 would be transferred to Wind Down Co. upon the

12 effective date?

13 A. Yes.

14 Q. And then do you understand that

15 creditors in Class 4 of the plan would have

16 claims against -- well, would be paid by, so,

17 you know, whatever proceeds Wind Down Co. is

18 able to generate from the sale of that

19 interest?

20 MS. GOLDBERG: Objection.

21 A. The answer is yes. I just don't

22 recall if it's Class 3 or Class 4.

23 I'll take your word that it's

24 Class 4, though.

25 Q. Okay. Thank you.

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1 E. DIAMOND

2 Q. Well, has All Year or Fee Owner ever

3 asked for an appraisal of the value of the YGJV

4 interest?

5 MS. GOLDBERG: Objection.

6 A. I'm sorry. Of the interest?

7 Q. Of All Year's interest in YGJV?

8 A. We have an -- we ask -- we

9 commissioned an appraisal of the hotel itself.

10 But, as you know, absent having

11 relevant and timely information, it's very hard

12 to form an opinion about the value. So we

13 don't have an independent appraisal of the

14 shares themselves.

15 Q. When was that appraisal of the hotel

16 done?

17 A. It was published in our disclosure

18 statement. But maybe as of December -- the

19 dating is in the disclosure statement.

20 But it might have been as of the end

21 of 2021.

22 Q. Do you remember who performed that

23 appraisal?

24 A. No, I don't.

25 MR. BASSETT: Will, can you put that

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1 E. DIAMOND

2 I'll represent to you that it is

3 Class 4.

4 A. Okay.

5 Q. So -- and the plan does not say

6 anything about what the value of that YGJV

7 interest will be, right?

8 A. No, it doesn't give values. No.

9 Q. So it doesn't warrant that the YGJV

10 interest is going to be at least a certain

11 dollar, worth a certain dollar amount, right?

12 A. No.

13 Q. So it's -- and, in fact, it's

14 possible that that interest could be valueless,

15 right?

16 MS. GOLDBERG: Objection.

17 A. Certainly possible.

18 I don't think so.

19 Q. Why do you say you don't think so?

20 A. So I'd like to -- my hope is that

21 it's worth something and the creditors of All

22 Year recover.

23 And the fact that people were

24 willing to buy it and fighting over it, tells

25 me that there's some value there.

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1 E. DIAMOND

2 appraisal that we have in the chat, please.

3 MR. FARMER: Apologies for a brief

4 delay. I'm having a technical issue.

5 MR. BASSETT: While we're waiting --

6 BY MR. BASSETT:

7 Q. Mr. Diamond, do you understand that

8 the Class 4 creditors are the only impaired

9 class under the All Year plan?

10 MS. GOLDBERG: Objection.

11 A. Yes.

12 Q. So in order for the All Year plan to

13 be confirmed, Class 4 needs to vote in favor of

14 the plan, right?

15 MS. GOLDBERG: Objection.

16 A. I don't recall -- I -- the technical

17 -- the technicalities of them. But yes, we do

18 need Class 4 to vote in favor.

19 Q. Okay.

20 And the Class 4 creditors consist

21 of, among other creditors, the holders of the

22 Series C bonds, right?

23 MS. GOLDBERG: Objection.

24 A. They are part of Class -- of

25 Class 4, yes.



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1 E. DIAMOND

2 Q. And who else is in Class 4, to your

3 recollection?

4 A. Other noteholders. Other classes of

5 noteholders.

6 There were some D&O indemnity

7 claims.

8 And I don't -- I don't -- the class

9 action claims I think we classified are a

10 different classification.

11 Q. Do you know what -- do you know what

12 percentage, in terms of total dollar amount,

13 the Series C bond claims represent in Class 4?

14 A. Not offhand, no.

15 Q. Do you know if it's more than

16 one-third?

17 A. Sitting here, I don't recall.

18 Q. Well, do you know if the Series C

19 noteholders have what could be referred to as a

20 blocking position in Class 4?

21 MS. GOLDBERG: Objection.

22 A. Again, sitting here, I don't

23 remember the numbers specifically.

24 Q. Do you recall ever discussing

25 whether they do, in fact, have a blocking

Page 156

1 E. DIAMOND

2 situation?

3 MS. GOLDBERG: Objection.

4 A. Certainly potentially, yes. The --

5 again, in the context of a negotiated sale or

6 proceeding, then certainly.

7 Q. Well, I'm positing a scenario in

8 which after the sale of Fee Owner's assets, Fee

9 Owner is insolvent.

10 So if -- and I'll just speak --

11 these aren't general numbers. Just for purpose

12 of asking. These aren't accurate numbers. But

13 for purposes of asking the questions.

14 If you were to assume that the total

15 outstanding amount of the Series C bonds, the

16 obligations under the Series C bonds was

17 \$190 million, then Fee Owner is liable on a

18 guaranty claim against it for up to

19 \$190 million, right?

20 MS. GOLDBERG: Objection.

21 A. I don't know if it's dollar for

22 dollar exactly, but okay. Roughly.

23 Q. Okay.

24 Let's just assume that the guaranty

25 liability is \$190 million.

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1 E. DIAMOND

2 position?

3 MS. GOLDBERG: Objection.

4 A. I do remember thinking about it. I

5 don't remember the conclusion.

6 Q. So if Fee Owner in its involuntary

7 case were to sell the William Vale complex for

8 less than whatever the total amount outstanding

9 under the Series C bonds is, would any value in

10 that scenario flow up to All Year as the

11 indirect 50 percent owner of Fee Owner?

12 MS. GOLDBERG: Objection.

13 A. I'm sorry. Say that again.

14 I'm just following the steps you

15 laid out.

16 Q. So the -- we've established that Fee

17 Owner is liable on the guaranty of the Series C

18 bonds, right?

19 A. Yes.

20 Q. Okay.

21 So if in bankruptcy Fee Owner were

22 to sell its assets and realize something less

23 than what is outstanding under the Series C

24 bonds, would there be anything, any value that

25 flows up to All Year as equity in that

Page 157

1 E. DIAMOND

2 A. Sure.

3 Q. If the William Vale complex sells

4 for \$160 million, in that situation would there

5 be any value that flows up to the equity

6 holders, to All Year and to Mr. Weiss of Fee

7 Owner?

8 MS. GOLDBERG: Objection.

9 A. Without any concessions on the

10 guaranty claim?

11 Q. Right.

12 A. Under a strict -- under those strict

13 numbers, then I would agree with you.

14 Q. Okay.

15 But in that situation, the sale of

16 the note and mortgage for \$160 million would

17 still reduce All Year's liability accordingly

18 on the Series C bonds, right?

19 MS. GOLDBERG: Objection.

20 A. Any -- any value received -- any --

21 if they receive 160 million for the note and

22 the mortgage, that would reduce their claim at

23 All Year.

24 Q. Right.

25 The Series C, the Series C bond

<p style="text-align: right;">Page 158</p> <p>1 E. DIAMOND</p> <p>2 claims against All Year are going to be reduced</p> <p>3 by whatever the Series C bondholders end up</p> <p>4 getting on account of the note and mortgage,</p> <p>5 right?</p> <p>6 MS. GOLDBERG: Objection.</p> <p>7 A. That -- yes, correct.</p> <p>8 Q. Okay.</p> <p>9 I don't know if my -- I think the</p> <p>10 technical issue has been resolved.</p> <p>11 MR. BASSETT: Wow, this is a huge</p> <p>12 document.</p> <p>13 MS. GOLDBERG: Yeah, it's going to</p> <p>14 take a little bit of -- a few minutes to</p> <p>15 download, probably.</p> <p>16 MR. BASSETT: While that's</p> <p>17 downloading, why don't we take a quick</p> <p>18 break. I think that would be a better use</p> <p>19 of our time.</p> <p>20 And then I don't want to make</p> <p>21 promises, because that's always dangerous,</p> <p>22 but I don't think I have a whole lot left.</p> <p>23 MS. GOLDBERG: Great. Okay.</p> <p>24 So ten minutes, is that good, or do</p> <p>25 you want even shorter?</p>	<p style="text-align: right;">Page 159</p> <p>1 E. DIAMOND</p> <p>2 MR. BASSETT: Let's do ten, just in</p> <p>3 case there are any technological issues.</p> <p>4 MS. GOLDBERG: Okay.</p> <p>5 So we'll be back right before</p> <p>6 2:00 p.m.</p> <p>7 MR. BASSETT: All right. Thank you.</p> <p>8 THE VIDEOGRAPHER: Okay.</p> <p>9 We're going off the record at</p> <p>10 1:48 p.m.</p> <p>11 This marks the end of media three.</p> <p>12 (Recess is taken.)</p> <p>13 THE VIDEOGRAPHER: We are back on</p> <p>14 the record at 2:02 p.m.</p> <p>15 This marks the beginning of media</p> <p>16 four.</p> <p>17 BY MR. BASSETT:</p> <p>18 Q. Mr. Diamond, I think my colleague</p> <p>19 was able to successfully upload the next</p> <p>20 document. At least I'm able to access it.</p> <p>21 Are you able to access it, too?</p> <p>22 Mr. Diamond, are you on mute?</p> <p>23 A. Sorry, yeah. We were on mute.</p> <p>24 Yes, I have it.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 160</p> <p>1 E. DIAMOND</p> <p>2 This will be marked as Diamond</p> <p>3 Exhibit 9.</p> <p>4 (Diamond Exhibit 9, CBRE Appraisal</p> <p>5 Report for the William Vale, marked for</p> <p>6 identification.)</p> <p>7 MR. BASSETT: I believe that's where</p> <p>8 we are.</p> <p>9 BY MR. BASSETT:</p> <p>10 Q. And if you look at the first page,</p> <p>11 this is the CBRE appraisal report for the</p> <p>12 William Vale.</p> <p>13 Have you seen this document before?</p> <p>14 A. Yes.</p> <p>15 Q. Is this the appraisal report that</p> <p>16 you're referring to?</p> <p>17 A. Yes.</p> <p>18 Q. This is dated as of -- well, it was</p> <p>19 sent by CBRE on February 23, 2022, right?</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 And why -- why -- did Fee Owner</p> <p>23 commission this appraisal report?</p> <p>24 A. I'm sorry?</p> <p>25 Q. Who commissioned this appraisal</p>	<p style="text-align: right;">Page 161</p> <p>1 E. DIAMOND</p> <p>2 report?</p> <p>3 A. We did.</p> <p>4 Q. We being All Year?</p> <p>5 MS. GOLDBERG: Objection.</p> <p>6 A. We being, you know, Asaf and myself.</p> <p>7 Q. Okay.</p> <p>8 And why -- why did you seek the</p> <p>9 appraisal at this time?</p> <p>10 A. I don't specifically recall why.</p> <p>11 But...</p> <p>12 Q. Well, you were, as we discussed</p> <p>13 before, you were having discussions with</p> <p>14 potential purchasers of the noted mortgage in</p> <p>15 2022, right?</p> <p>16 A. Sorry. The -- well, I believe</p> <p>17 Mishmeret was having conversations with people.</p> <p>18 Q. Okay.</p> <p>19 And then ultimately, at least one or</p> <p>20 more of those proposals ended up also</p> <p>21 including, as a related piece, acquisition of</p> <p>22 the YGWV equity or All Year's interest in YGWV,</p> <p>23 right?</p> <p>24 MS. GOLDBERG: Objection to form.</p> <p>25 A. Yes.</p>

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1 E. DIAMOND  
2 whether a claim like the one I'm describing  
3 would fall into that class?  
4 MS. GOLDBERG: Objection.  
5 A. I don't know.  
6 Q. Okay.  
7 I think I'm done or almost done.  
8 Can we just take -- I just want to  
9 take a break to talk to my colleague.  
10 MS. GOLDBERG: Sure.  
11 MR. BASSETT: Five minutes?  
12 MS. GOLDBERG: Sure.  
13 MR. BASSETT: Thanks, guys.  
14 THE VIDEOGRAPHER: We're going off  
15 the record at 2:25 p.m.  
16 (Recess is taken.)  
17 THE VIDEOGRAPHER: We are back on  
18 the record at 2:33 p.m.  
19 BY MR. BASSETT:  
20 Q. Mr. Diamond, before the break, we  
21 spent some time discussing an analysis that you  
22 said Fee Owner conducted of whether there were  
23 any defenses to payment on the Series C bonds.  
24 Do you remember that?  
25 A. I do.

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1 E. DIAMOND  
2 at that time, was that shared with Mr. Weiss?  
3 A. I don't believe so.  
4 Q. Okay.  
5 But that analysis would have been  
6 relevant to any defenses that Fee Owner might  
7 have under the guaranty, right?  
8 A. Again.  
9 Q. That analysis that was performed in  
10 2021 would have been relevant to any defenses  
11 that Fee Owner might have had under the  
12 guaranty, correct?  
13 A. Yes.  
14 Q. And Mr. Weiss is a 50 percent owner  
15 of Fee Owner through his interest in Member  
16 LLC, right?  
17 A. I believe so.  
18 Q. So was any consideration given to  
19 sharing that analysis with Mr. Weiss?  
20 A. I don't recall.  
21 Q. On behalf of Fee Owner -- strike  
22 that.  
23 Did Fee Owner ever, after the  
24 defaults under the Series C notes, seek to  
25 negotiate any kind of forbearance of payments

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1 E. DIAMOND  
2 Q. I think you said there was one that  
3 occurred after the filing of the petition, and  
4 then another you said sometime early in your  
5 tenure?  
6 A. Correct.  
7 Q. And by early in your tenure, do you  
8 mean sometime in early -- in early 2021?  
9 A. Yes.  
10 Q. Okay.  
11 And who performed that analysis in  
12 2021 on behalf of Fee Owner?  
13 A. Our counsel at the time would've  
14 been either Weil or Archer.  
15 Q. Do you remember which one?  
16 A. I don't.  
17 Q. Was -- did Archer -- Archer  
18 represented Fee Owner at that time or All Year?  
19 A. I don't remember specifically the  
20 retentions.  
21 Q. Okay.  
22 So you don't know if they  
23 represented Fee Owner or All Year or both?  
24 A. Correct.  
25 Q. Was that an analysis that was done

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1 E. DIAMOND  
2 with the Series C bondholders?  
3 MS. GOLDBERG: Objection.  
4 A. We had a variety of conversations.  
5 I don't remember specifically if forbearance  
6 was part of those or not.  
7 Q. Did Fee Owner have any discussions  
8 with All Year at the time about its liability  
9 under the guaranty?  
10 MS. GOLDBERG: Objection.  
11 A. I'm sorry. Did who?  
12 Q. Fee Owner.  
13 A. Discuss with whom? I'm sorry.  
14 Q. All Year.  
15 MS. GOLDBERG: Same objection.  
16 A. I mean, we just -- it was part of  
17 our thinking.  
18 I don't know how to separate that.  
19 Q. Well, were there any discussions  
20 between -- strike that.  
21 Did Fee Owner ever at any time have  
22 discussions with Mishmeret about a forbearance  
23 of payments due under the note and mortgage?  
24 MS. GOLDBERG: Objection.  
25 A. Like I said, there were a number of

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1 E. DIAMOND

2 discussions. I don't remember if forbearance

3 was ever a specific topic or not.

4 Q. Do you remember whether -- do you

5 remember when the note and mortgage were

6 transferred by All Year to Mishmeret?

7 A. Are you asking, like, temporally

8 when it happened or?

9 Q. Yeah, yeah. Like the date.

10 I have it somewhere, but...

11 A. Probably -- my recollection, it was

12 spring of 2021. March or April.

13 Q. Yeah. I should have it at my

14 fingertips.

15 Yeah, I think it was March of 2021.

16 Prior to March of 2021, All Year

17 held the note and mortgage, right?

18 A. Yes.

19 Q. Okay.

20 So are you aware of any discussions

21 that occurred between Fee Owner and All Year

22 regarding Fee Owner's liability on the note and

23 mortgage prior to it being transferred to the

24 Series C bondholders?

25 MS. GOLDBERG: Objection.

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1 E. DIAMOND

2 have separate representatives who could've had

3 arms' length discussions about liability on the

4 note and mortgage, right?

5 MS. GOLDBERG: Objection.

6 A. I guess, yes.

7 MR. BASSETT: I think that's all the

8 questions that I have.

9 MS. GOLDBERG: Okay.

10 We have no questions for

11 Mr. Diamond.

12 MR. MEHLMAN: Anyone else?

13 MS. GOLDBERG: Anyone else?

14 MR. SILVESTRI: Nothing from

15 petitioning creditors.

16 MS. GOLDBERG: Okay.

17 MR. BASSETT: Thanks.

18 MS. GOLDBERG: Thank you.

19 Lisa, we are going to ask for the

20 immediate turnaround of the final

21 transcript.

22 I don't think we need the rough,

23 though, right?

24 Okay.

25 THE VIDEOGRAPHER: Are we all set to

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1 E. DIAMOND

2 A. I don't recall any specific

3 conversations.

4 Q. Do you have a general recollection

5 of any conversations?

6 A. You mean, between me and myself?

7 Q. Well, that's the question.

8 How would -- how would those

9 discussion occur?

10 I mean, prior to the transfer of the

11 note and mortgage to Fee Owner, Fee Owner was

12 obligated on the note and mortgage. And it was

13 obligated to make payments to All Year.

14 So was there -- was there anyone

15 capable of discussing --

16 A. I believe we made a demand for

17 payment. That's my recollection, that we made

18 some type demand for payment.

19 We didn't have anything to discuss

20 because we had no income coming in. Right. So

21 there was nothing we could do to deal with it

22 at that moment in time.

23 Q. Okay.

24 But -- yeah.

25 But All Year and Fee Owner did not

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1 E. DIAMOND

2 go off, Counsel?

3 MS. GOLDBERG: Oh, yeah.

4 THE VIDEOGRAPHER: This concludes

5 today's testimony of Ephraim Diamond.

6 We are going off the record at 2:40

7 p.m.

8 This also concludes media four.

9 (Time Noted: 2:40 p.m.)

10

11

12 -----

13 EPHRAIM DIAMOND

14

15 Subscribed and sworn to before me

16 this day of 2023.

17

18 -----

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CERTIFICATE

STATE OF NEW YORK )  
 ) ss.:  
 COUNTY OF NEW YORK )

I, LISA M. MURACO, a Notary Public  
within and for the State of New York and  
Florida, do hereby certify:

That EPHRAIM DIAMOND, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the  
testimony given by such witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage; and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 4th day of January, 2023.

LISA M. MURACO

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ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: IN RE: WYTHE BERRY FEE OWNER LLC  
Dep. Date: WEDNESDAY, JANUARY 4, 2023  
Deponent: EPHRAIM DIAMOND

CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read	Reason
6	___	_____	_____	_____
7	___	_____	_____	_____
8	___	_____	_____	_____
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16	___	_____	_____	_____
17	___	_____	_____	_____

Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME  
THIS \_\_\_ DAY OF \_\_\_\_\_, 2023.

(Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_